

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6209

Investigation into the Acquisition and Use of       )  
Central Office Codes by Local Exchange       )  
Carriers in Vermont       )

Order entered: 5/6/2003

**SCOPING ORDER AND HEARING SCHEDULE**

On February 11, 2003, a status conference was convened in this proceeding. Appearances by the parties were: John Cotter, Esq., for the Vermont Department of Public Service ("Department"); Gregory M. Kennan, Esq., for Verizon New England Inc., d/b/a Verizon-Vermont ("Verizon"); John H. Marshall, Esq., for Adelphia Business Solutions, Inc. ("Adelphia"); Paul J. Phillips, Esq., Primmer & Piper, PC, for the nine independent Vermont telephone companies ("Independents"),<sup>1</sup>; and Andrew Hinkley, for National Mobile Communications, Inc., d/b/a SoverNet ("Sovernet").<sup>2</sup>

The purpose of the status conference was to determine the future course of this docket in light of the policy determinations outlined in the Vermont Public Service Board's ("Board") decision in Docket 6742.<sup>3</sup> In the Arbitration Order, the Board reaffirmed its policy that allows carriers to define their own local calling areas for retail purposes, but bases wholesale

---

1. The nine independent telephone companies are: STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont; Perkinsville Telephone Company; Shoreham Telephone Company, Inc.; Waitsfield-Fayston Telephone Company, Inc. d/b/a Waitsfield Telecom & d/b/a Champlain Valley Telecom; Topsham Telephone Company; Franklin Telephone Company; Northfield Telephone Company; Ludlow Telephone Company, and Vermont Telephone Company.

2. On February 27, 2003, Sovernet filed a Motion to Intervene on behalf of Mr. Hinkley. The Board's order opening this investigation, dated March 25, 1999, states that all companies certified to provide local exchange services in Vermont shall be parties to the proceeding. Therefore, since Sovernet is a certified local exchange carrier in Vermont they are already a party to this docket and there is no need to rule on the motion.

3. *Petition of Global NAPs, Inc., for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England Inc., d/b/a Verizon Vermont*, Order entered December 26, 2002 ("Arbitration Order").

compensation among carriers upon the local calling areas previously established by the Board in Docket 5670. In addition, the Board states that "calls must be rated for both wholesale and retail purposes based upon their physical origination and termination points (absent the use of FX or similar service). Arbitration Order at 44. In addition, the Order "applies to ISP-Bound traffic and bars the use of VNXXs for the purpose of completing calls to ISPs." *Id.* at 38. However, the Board's decision does allow for alternatives to VNXX, "so long as the intercarrier-compensation is based upon the actual origination and termination points." *Id.* at 44.

During the course of the status conference the parties and the Hearing Officers identified the issues they felt remained to be decided in this docket. The Hearing Officers also made it clear that, absent convincing factual evidence to the contrary, there appeared to be no reason to relitigate issues previously decided in the Board's Order in Docket 6742. At the conclusion of the status conference the Hearing Officers requested that the parties submit comments regarding the future scope of this proceeding.

#### Positions of the Parties

In response to the Hearing Officers' request, Sovernet filed a list of six issues. These issues concern the jurisdictional nature of ISP bound traffic, intercarrier compensation for ISP bound calls, and whether CLECs are entitled to a single interconnection point. It appears that many, if not all, of these issues were decided by the Board in the context of the Arbitration Docket. Sovernet should note that absent clear and convincing reasons as to why the Board's policy determinations set forth in the Arbitration Order are in error, the Hearing Officers see little reason for parties to relitigate these issues.

Verizon comments that the Arbitration Order has decided the main issues in this docket and that only questions regarding implementation and enforcement of the Arbitration Order remain to be decided. However, Verizon believes these questions are best decided on a case-by-case basis. Therefore, Verizon believes that further proceedings are unnecessary and the docket should be closed.

Adelphia's comments address three issues raised during the status conference: (1) the applicability of the Arbitration Order to this docket; (2) the identification of allowable alternatives to VNXX services; and (3) the negotiation of traffic-exchange agreements with the Independents. With respect to the first issue, Adelphia argues that given the comments by parties at the status conference, to the effect that no one seeks a retroactive determination of the Arbitration Order,

there is little point in litigating the applicability of that order to this docket. Secondly, Adelphia comments that the identification and migration of customers to allowable alternatives to VNXX is an issue that needs to be addressed. However, Adelphia feels that this issue is best addressed through informal means outside of this docket. Lastly, Adelphia comments that the Board's decisions regarding VNXX in the Arbitration Order will allow the carriers and the Independents to negotiate acceptable traffic-exchange agreements.

The Independents' comments identify three issues that they feel remain to be resolved in this docket. These issues are: (1) the applicability of the Arbitration Order to this docket; (2) the identification of allowable alternatives to VNXX service; and (3) the migration of VNXX customers to allowable alternative services. The Independents are concerned that the Arbitration Order does not apply to all carriers generally and also leaves many questions unresolved which require resolution in this docket. The Independents also believe that it is necessary to identify the allowable alternatives to VNXX in the context of an evidentiary proceeding to clarify any ambiguity that may exist with respect to these alternatives. In addition, the Independents believe that there is significant risk of rate shock and customer confusion associated with the termination of VNXX services and that it is important to establish an orderly migration process.

The Department comments that the identification of allowable alternatives to VNXX services and the establishment of a structure for migration of customers to these allowable alternatives are issues which need to be addressed in the context of this docket.

### Discussion

Based upon the discussion among the parties at the status conference and the comments filed by the parties, we believe the following issues remain to be decided in this docket: (1) the applicability of the Board's decision in the Arbitration Order to this docket; (2) identification of allowable alternatives to VNXX service; and (3) the migration of existing VNXX customers to alternative services.

The Board's decision in the Arbitration Order was issued in the context of a two-party arbitration. While some parties have questioned whether this type of decision applies to all carriers generally, others believe the Arbitration Order speaks for itself and it is not necessary to adjudicate its applicability in this docket. In order to alleviate any possible concerns regarding the applicability of the Board's policy as expressed in the Arbitration Order, we believe the Board should issue an affirmative ruling applicable to all telecom providers in this docket. While the

logic of the Board's decision in the Arbitration Order would apply to all carriers in Vermont offering VNXX services similar to those described in that Order, we recognize that parties may not have had an opportunity to present evidence supporting the use of VNXX. Therefore, parties who believe that the Order should not have general applicability should file testimony according to the schedule outlined below. If no party submits testimony opposing the application of the Docket 6742 VNXX ruling to all carriers, we intend to recommend that the Board do so.

In the Arbitration Order, the Board allows for alternatives to VNXX service that meet the intercarrier-compensation criteria established in that Order; specifically, the Order states that the requirement that the nature of a telephone call be determined by the physical origination and termination points may be altered in the case of foreign exchange and "foreign exchange and similar services." Arbitration Order at 43. Although the Arbitration Order clearly contemplates that this exception is very narrow, the Arbitration Order does not precisely define these permissible similar services. Therefore, the Hearing Officers believe it is necessary to collect evidence regarding what services may be permissible under the Arbitration Order, for the purpose of altering the otherwise applicable requirement that the physical origination and termination points determine whether the code is local or toll.

As the parties have noted in their comments, the Board's prohibition of VNXX service may require telecommunications providers to alter the way they now serve ISP customers and may lead to ISP's deploying new or different telephone numbers to serve their customers. In order to minimize these potential impacts, the Hearing Officers believe that it is important to formulate a plan for migration of affected consumers to services consistent with Board requirements in this docket. Therefore, parties shall recommend implementation procedures and schedules for a transition from VNXX to facilities-based or other services consistent with the schedule outlined below. Parties should file testimony regarding any existing or potential alternative services according to the schedule outlined below.

#### Schedule

Parties file prefiled testimony, briefs and other testimony	June 2, 2003
Parties conduct informal discovery with responses due within one week	June 2-30, 2003

Parties file rebuttal testimony (or scope of live rebuttal testimony, if necessary)

July 14, 2003

Technical hearing (if necessary) to be scheduled

Week of July 21, 2003

SO ORDERED.

DATED at Montpelier, Vermont, this 6<sup>th</sup> day of May, 2003.

s/Peter B. Meyer  
Peter Meyer, Hearing Officer

s/Gregg Faber  
Gregg Faber, Hearing Officer

OFFICE OF THE CLERK

FILED: May 6, 2003

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*